

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

**THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN**

FRIDAY, THE 23RD NOVEMBER 2007 / 2ND AGRAHAYANA 1929

WP(C).No. 34714 of 2007(S)

OA.1365/1999 of CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH
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PETITIONERS:

- 1. THE CHIEF GENERAL MANAGER TELECOM.
KERALA CIRCLE, THIRUVANANTHAPURAM.**
- 2. THE GENERAL MANAGER, TELECOM, KOZHIKODE.**
- 3. THE SUB DIVISIONAL OFFICER TELECOM,
(SDOT) KOZHIKODE.**
- 4. THE DIVISIONAL ENGINEER (TELEGRAPH),
KOZHIKODE.**

BY ADV. SRI.P.VIJAYAKUMAR, SC, BSNL

RESPONDENTS:

- 1. T.M.GOPALAN, THIRUMADATHIL HOUSE,
P.O.NENMINDA, KOZHIKODE.**
- 2. K.RAVINDRAN, KILIYAMPURATH HOUSE,
KINALUR P.O., BALUSSERY.**
- 3. K.JAYARAJAN, KUNNATH HOUSE,
THALAKULLATHUR, CALICUT DISTRICT.**
- 4. C.CHANDRAN, KUNNUMMAL HOUSE,
ERAMANGALAM P.O., BALUSSERY (VIA),
KOZHIKODE DISTRICT.**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 23/11/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

K.Balakrishnan Nair &
K.P.Balachandran, JJ.

W.P.(C)No. 34714 of 2007 S

JUDGMENT

Balakrishnan Nair, J.

The respondents in O.A.No.1365/99 of the Central Administrative Tribunal, Ernakulam Bench are the petitioners. The applicants therein are the respondents.

2. The respondents filed Exhibit P1 original application feeling aggrieved by the omission of the petitioners to include them in the panel of casual labourers, pursuant to the direction of the Central Administrative Tribunal, Ernakulam Bench in O.A.No.1402/93. The petitioners were operating a panel of casual labourers. The above original application was filed by persons, who were wrongly excluded from that panel. In the light of the direction of the Central Administrative Tribunal in that original application, applications of eligible

persons were called for, for inclusion in the panel. The respondents/applicants also submitted their applications for empanelment. It was in the year 1995. When they came to know that fresh hands were being employed as casual labourers, they filed the present original application in 1999. In the said original application, the petitioners herein filed a reply statement contending that the petitioners' names did not find a place in the panel of casual labourers, prepared and published in the year 1995. The said list was also produced along with the reply statement. The petitioners have worked for some time as casual labourers. But, for more than seven years, nothing was heard of them. The empanelment was made taking into account the direction issued by the Central Administrative Tribunal in O.A.No.1027/91 also. In the said original application, the Tribunal directed that persons, about whom nothing was heard of about more than seven years, need not be included in the panel of casual labourers. In view

of the said parameter, the petitioners were excluded from the panel of casual labourers.

3. On receipt of this reply statement, they filed an application for amendment of the original application. But, the respondents in the original application opposed it contending that there is considerable delay in challenging the panel of casual labourers. But, the amendment was allowed. The petitioners again filed an additional reply statement in the amended original application.

4. After hearing both sides, the Tribunal allowed the application and directed empanelment of the original applicants. Challenging the said decision, this writ petition is filed.

5. The learned counsel for the petitioners mainly canvassed two points before us. The first point is that the applicants abandoned their claim and nothing was heard of them for more than seven years. Therefore, they were rightly excluded from the panel. The Tribunal considered the said objection. The explanation of the applicants was

that no job was available to them and therefore, they were never called for such employment. Therefore, it cannot be said that they have abandoned their claim. The Tribunal accepted the said explanation. According to the Tribunal, the petitioners did not have a case that the applicants were called at any time for engagement on casual basis and then they were not available. Therefore, the continued non-engagement for more than seven years was not due to the fault of the casual labourers. On the basis of that finding, the contention of the petitioners were overlooked. The learned counsel for the petitioners attacks the said finding contending that unlike the regular employees, the casual labourers would not be served with any notice to come forward for engagement. They have to be present as and when the work is available.

6. We are of the view that the stand taken by the Central Administrative Tribunal on the facts available in the case is a plausible view. The Tribunal accepted the contention that no work was

available and therefore, the applicants were not engaged for a considerable period of time. The same is a finding on the facts of the case, with which, this Court cannot interfere under Article 227 of the Constitution of India.

7. The learned counsel for the petitioners secondly contended that the list was published excluding the applicants in 1995. The applicants challenged it only in 1999. According to the learned counsel for the petitioners, the list was published as directed by the Tribunal in O.A.No. 1402/93. So, every one must be presumed to have been notified of the list. The applicants submitted that after the submission of the applications in 1995, they were waiting to know the fate of their applications. While so, in 1999, they found that some fresh hands were being engaged. Therefore, they filed the original application. In that original application, the list of empanelled persons was produced. The applicants contended that they came to know of the list only then. The

Tribunal accepted the said version. If a notification is published in the Gazette, every one is presumed to note it. But, actually, most of the people may not be knowing it. So, the Tribunal, while appreciating the evidence on record, accepted the contention that the applicants came to know of the list only in 1999 and therefore, allowed them to challenge the list. We feel that we are not justified in interfering with the same under Article 227 of the Constitution of India. No other point was urged.

In the result, the writ petition fails and it is dismissed.

(K.Balakrishnan Nair, Judge)

23rd November, 2007

(K.P.Balachandran, Judge)

tkv